



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2013- 0107]**

#### **Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders;**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption, request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 9 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the “Instructions for Performing and Recording Physical Examinations” have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER**

**DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2013-0107- using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal

Register published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at <http://Docketinfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Elaine Papp, Chief, Medical Programs Division, (202) 366-4001, or via email at [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), or by letter FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 9 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown

cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

## **SUMMARY OF APPLICATIONS**

### **Selene Anderson**

Ms. Anderson is a 58 year-old driver in Tennessee. She suffered seizures as a child and has been seizure-free since 1968. She takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years.

Christopher Bird

Mr. Bird is a 29 year-old driver in Ohio. He has a diagnosis of epilepsy and has remained seizure-free for over 15 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 5 years. His physician is supportive of Mr. Bird receiving an exemption.

Fletcher Dortch

Mr. Dortch is a 58 year-old driver in Maryland. He had a single seizure in 2007. He takes anti-seizure medication with the dosage and frequency remaining the same for over 5 years. His physician is supportive of Mr. Dortch receiving an exemption.

Michael Kramer

Mr. Kramer is a 46 year-old driver in Kansas. He had a seizure due to a brain tumor which was removed in 2009. He has remained seizure-free since that time. He does not require anti-seizure medication. His physician is supportive of Mr. Kramer receiving an exemption.

Edward Nissenbaum

Mr. Nissenbaum is a 61 year-old driver in Pennsylvania. He had a seizure in 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician is supportive of Mr. Nissenbaum receiving an exemption.

Stanislav Spielvogel

Mr. Spielvogel is a 55 year-old driver in Connecticut. He has a diagnosis of epilepsy and has remained seizure-free for over 20 years. He takes anti-seizure

medication with the dosage and frequency remaining the same since 2006. His physician is supportive of Mr. Spielvogel receiving an exemption.

Stephen Stawinsky

Mr. Stawinsky is a 54 year-old driver in Pennsylvania. He had a seizure in 1995 and has been seizure-free for over 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same since 2005. His physician is supportive of Mr. Stawinsky receiving an exemption.

Lyle Trimm

Mr. Trimm is a 55 year-old driver in New Jersey. He had a seizure in 2007 and has been seizure-free for 6 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time.

George Webb

Mr. Webb is a 71 year-old driver in Massachusetts. He has a history of seizure disorder and has remained seizure-free for over 24 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician is supportive of Mr. Webb receiving an exemption.

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice.

We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: July 8, 2013

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Larry W. Minor  
Associate Administrator for Policy

[4910-EX-P]

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